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09/786,191	05/24/2001	Henri-Georges Bois	03715.0080	5212

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EXAMINER

HUYNH, LOUIS K

ART UNIT PAPER NUMBER

3721

DATE MAILED: 12/04/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/786,191

Applicant(s)

BOIS, HENRI-GEORGES *CH*

Examiner

Louis K. Huynh

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 24 May 2001 and 28 December 2001.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 May 2001 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All   b) ☐ Some \*   c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)                      4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)                      5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Specification*

1. This application does not contain an abstract of the disclosure as required by 37 CFR 1.72(b). Although an abstract has been provided in the PCT/FR00/01903, an abstract should be provided on a separate sheet in accordance with current US practice.

### *Claim Rejections - 35 USC § 112*

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1-25 are rejected under 35 U.S.C. 112, first paragraph, because independent claims 1 and 19 are single means claims.

A single means claim, i.e., where a means recitation does not appear in combination with another recited element of means, is subject to an undue breadth rejection under 35 U.S.C. 112, first paragraph. In re Hyatt, 708 F.2d 712, 714-715, 218 USPQ 195, 197 (Fed. Cir. 1983) (A single means claim which covered every conceivable means for achieving the stated purpose was held nonenabling for the scope of the claim because the specification disclosed at most only those means known to the inventor.). When claims depend on a recited property, a fact situation comparable to Hyatt is possible, where the claim covers every conceivable structure (means) for achieving the stated property (result) while the specification discloses at most only those known to the inventor. MPEP 2164.08(a).

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4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1-24 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is generally narrative, failing to conform with current U.S. practice. The claim appears to be a literal translation into English from a foreign document.

Claim 1, lines 1-2: "An apparatus for forming bags comprising a continuously traveling film" renders the claim in definite because the film is not a part of the apparatus. Applicant should utilize the "wherein" clause to define that the bags is formed from a continuous traveling film.

Claim 1, line 5: "means for treating the film" lacks proper antecedent basis.

Claim 2, line 2: "mechanical feeler" is vague and indefinite for it is unclear as to what mechanism applicant is referring.

Claim 6, lines 2-3: "the tubular bag blank" lacks proper antecedent basis.

Claim 6, line 3: "in this way" is indefinite for it is unclear as to what way applicant is referring.

Claim 6, line 3: "means suitable for closing the bag" lacks proper antecedent basis.

Claim 8, lines 1-2: "comprising a film ... function" renders the claim indefinite because the film is not a part of the apparatus.

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Claim 11, line 3: "or" renders the claim indefinite for it is unclear whether or not the complementary closure strip, tear/cut tapes and adhesive tapes are all included on the tape.

Applicant should use the phrase "one of...and..."

Claim 19, line 5: "the means for cyclically processing the film" lacks proper antecedent basis.

Claim 21, lines 2-3: "the means ... transversely" lacks proper antecedent basis.

Claim 25, lines 2-3: "means ... transversely" lacks proper antecedent basis.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 2, 6, 8-14, 16, 19-21 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by Talbott et al. (US 4,745,731).

Talbott discloses an apparatus and a method for forming bags wherein the interengagement of the closure strips (22, 23) on a film (18) traveling through a form-fill-seal machine (13) are sensed by detectors (21, 35) (column 4, lines 57-68).

With respect to claims 2 and 20, the detector (35) is a mechanical feeler since it is designed to feel the differential pressure of air

With respect to claim 6, the form-fill-seal machine (13) includes means (28, 29) for shaping the film into a tubular state, means (24) for filling the tubular bag blank and means (14) for closing the bag.

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With respect to claims 9 and 10, the apparatus of Talbott includes feed rollers for causing the film to travel horizontally and vertically (Figure 1).

With respect to claims 13 and 21, the detectors (21, 35) detects the presence of the closure strip (inherent), the detectors (21) detects the proper feeding of the closure strips in both transverse and longitudinal direction of the film.

With respect to claims 14 and 16, the apparatus of Talbott includes dual detectors (21) for detecting the closure strips (22, 23) that are juxtaposed in the longitudinal travel direction of the film.

8. Claims 1, 2, 4, 5, 8-14, 16, 19-21 and 25 are rejected under 35 U.S.C. 102(b) as being anticipated by PAJ (Patent abstract of Japan 11165362).

PAJ discloses an apparatus and a method for forming bags wherein the intermeshing of the fasteners (52, 53) on a film (51) traveling through a form-fill-seal machine (13) are sensed by a detector (11), the detector (11) including a contact (11d) for feeling the thickness level of the fasteners (52, 53) intermeshing with each other (Solution) as well as for detecting the proper feeding of the fasteners (inherent).

***Claim Rejections - 35 USC § 103***

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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10. Claims 3, 4, 15, 17 and 22-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Talbott et al. (US 4,745,731) or over PAJ (Paten Abstract of Japan 11165362).

With respect to claims 3 and 4, the location of the detectors is obvious as a matter of engineering design choice since it does not solve any stated problem insofar as the record is concerned and thus does not patentably distinguish the claimed invention over the applied prior art.

With respect to claims 15, 17 and 22-23, the orientation of the closure strips with respect to the travel direction of the film is obvious to an ordinary skilled person in the art as a matter of engineering choice since it does not solve any stated problem insofar as the record is concerned and thus does not patentably distinguish the claimed invention over the applied prior art.

Furthermore, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. *Ex parte Masham*, 2 USPQ2d 1647 (1987). Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the apparatus of Talbott and/or of PAJ by having provided detectors that are suitable for detecting the interengagement of the closure strips in according to the orientation of the closure strips with respect to the travel direction of the film.

11. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Talbott et al. (US 4,745,731) or over PAJ (Paten Abstract of Japan 11165362) in view of Ausnit (US 4,876,842).

The apparatus of Talbott and/or of PAJ meet all of applicant's claimed subject matter but lacks the specific teaching of the means for fixing closure strips onto the film.

However, Ausnit discloses a means (42) for fixing the fasteners (17) onto the traveling film (13).

Therefore, it would have been obvious to a person with an ordinary skill in the art, at the time the invention was made, to have modified the apparatus of Talbott and/or of PAJ by having provided a means for fixing the closure strips onto the film, as taught by Ausnit, in order to attached the closure strip onto the film when the film and the closure strips are fed separately.

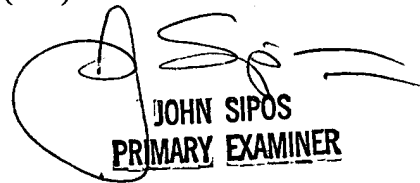
***Conclusion***

12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Louis K. Huynh whose telephone number is (703) 306-5694. The examiner can normally be reached on M-F from 9:30AM to 5:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi I. Rada can be reached on (703) 308-2187. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3579 for regular communications and (703) 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

LH  
December 2, 2002

  
JOHN SIPOS  
PRIMARY EXAMINER